

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

MARC S. KIRSCHNER,  
as Trustee of the Refco Private Actions Trust,

Plaintiff,

-VS-

Case No. 07 CV 8165 (GEL)

ECF Filed

PHILLIP R. BENNETT, SANTO C.  
MAGGIO, ROBERT C. TROSTEN, MAYER,  
BROWN, ROWE & MAW, LLP, GRANT  
THORNTON LLP, and ERNST & YOUNG  
U.S. LLP,

Defendants.

## **PLAINTIFF'S NOTICE OF MOTION TO REMAND**

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Pursuant to 28 U.S.C. § 1447, Plaintiff Mark S. Kirschner, in his capacity as Trustee of the Refco Private Actions Trust, respectfully moves the Court to remand this action to the Supreme Court of the State of New York, from which it was removed by defendants Mayer Brown LLP, Mayer Brown International LLP, and Grant Thornton LLP.<sup>1</sup> The action should be remanded because there is no subject matter jurisdiction and, moreover, even if there were subject matter jurisdiction, the mandatory and discretionary factors warrant abstention.

<sup>1</sup> While Plaintiff's complaint named Mayer, Brown, Rowe, & Maw, LLP as a defendant, around the time the action was filed, Mayer Brown changed its name to Mayer Brown LLP and Mayer Brown International LLP.

Plaintiff's motion is based on this pleading, the concurrently filed memorandum of law, and all papers and pleadings on file in this action, and on such further argument and evidence as the Court may consider.

Dated: October 17, 2007

Respectfully submitted,

By: /s/ Robert C. Juman

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